

STATE SPONSORED KILLING

My opposition to the death penalty evolved. I spent my 19th and 20th birthdays in Vietnam where I spent 13 months as a military policeman with the 4th Infantry Division. During that time, I saw enough death and carnage to become desensitized to it although naturally it made me angry.

When I returned, I finished my military commitment at Fort Polk, Louisiana as a military policeman. In that capacity, I saw more violence because as a military police officer, I was exposed to it as a matter of routine. My anger at those who would harm innocent people boiled over. Then, after I got out of the service, I joined the Baltimore Police Department and served there while I went to school.

After the police academy, I served in the northern district, working primarily in Hamden, Woodberry, Pimlico and Druid Hill Park, areas devastated by poverty and prone to horrible crime. I saw people do horrible things to each other, and I tended to dehumanize those who would commit such heinous acts. At one point, a police officer I knew made a car stop on Quantico Avenue in Pimlico. The drug dealer he stopped somehow wrested the officer's gun from him and shot him in the head repeatedly, killing him. The shooter received a sentence of 30 years, and it outraged me.

I left the northern district and became a burglary detective, and when I was 27 years old, I received a promotion to detective sergeant. Less than a year later, a prisoner I was interrogating escaped, jumping from a second story window. I jumped after him and shattered my right ankle and crushed my left heel. The prisoner I was chasing was a murderer. He was also an escape artist, accomplishing that feat four times. Then, after he secured a legitimate partial reprieve to work release, he and some of his friends murdered somebody else.

By the time I started law school, I thought some people were simply beyond redemption. Certainly that buttressed my notion that those evil people did not deserve to live in society. At that point, it was a fairly simple, and ostensibly logical conclusion for me to think that the most evil people in our society deserved the death penalty.

I probably felt that way until maybe ten years ago. Not only was the death penalty right, but also those who opposed it were muddleheaded, knee jerk liberals who were just plain wrong. Fortunately, the clamor against the death penalty rose from many quarters, including the Catholic Church I cherish. Maybe ten years ago, William Cardinal Keeler, then the Archbishop of Baltimore, preached about the death penalty and about the inherent dignity of human life, at a mass I was attending at my parish, Immaculate Conception in Towson.

Cardinal Keeler kindly and patiently explained the church's position on the death penalty. As he did, he told the congregation that killing anyone prematurely deprived that person of a chance to repent. That simple but eloquent remark struck me like a thunderbolt. It totally destroyed my arrogant certitude, born of an intellectual hubris, that I was absolutely right in my support of state sponsored killing. To be sure, I did not experience either a eureka moment or an immediate epiphany. Instead, I realized that I simply had to rethink the issue—and to pray about it.

At around the same time, I read an excellent book about Kirk Noble Bloodsworth. I could not begin to imagine the absolute horror of a wrongful conviction or a wrongful death sentence. I could not imagine languishing on death row an innocent man. I could not imagine the anticipation of being lifted onto a gurney, strapped down and injected with a combination of lethal drugs by an incompetent nurse's aide who, after having participated in other executions,

testified in federal court that she did not know the difference between a vein and an artery.

Then I read a book by John Grisham about a wrongful conviction in which a mentally ill person, who was innocent, was wrongfully sentenced to death. In that case, the prosecutor deliberately withheld exculpatory evidence. In fact, the book Mr. Grisham wrote disclosed that the initial investigators in that case could not have found the ground had they fallen out of an airplane. Fortunately that individual eventually received a form of vindication as well, but as in Mr. Bloodworth's case, he never got back those years he spent in prison. Of course, I cannot imagine that the inevitable scars from anticipating one's own execution would ever heal. I suppose one learns to live with them and to forgive, but they are always there.

It then became apparent to me that over the history of our country, various state governments have had to have executed innocent people. It simply does not comport with either logic or common sense to think that, regardless of the times, regardless of the law, regardless of the procedural safeguards, regardless of the technology, every conviction resulting in a death sentence is absolutely correct and unassailable. So here we have, on the one hand, the legal maxim that it is better that a hundred guilty men go free than one innocent man suffer conviction juxtaposed against, on the other hand, the very real possibility, if not likelihood, that if the death penalty remains, some state, perhaps our state, will kill that innocent person. That makes no sense.

I then looked at the teachings of the Church. In reflecting on those teachings, it occurred to me that the death penalty has a biblical quality of proportion: grievous punishment for grievous crime. Certainly one can argue that it deters grave evil and that even when the deterrent fails, at least it brings justice and emotional closure to the relatives of the victims. But does it?

If I assume someone is genuinely and absolutely guilty of a brutal and premeditated murder, that the person receives superb legal representation and that a fair jury convicts the defendant, killing the person is still the wrong choice. It accomplishes not a blessed thing. It certainly does not bring back or even honor the dead. It also does not ennoble the living. It does nothing to assuage the sorrow of the victim's loved ones. Only forgiveness can accomplish that.

Capital punishment can never, by its very nature, strike at murder's root. Only love can do that. Jesus showed us repeatedly, through his words and his actions, that the only true road to justice passes through mercy. Justice cannot be served by more violence. I fear that in the first decade of the 21st century, capital punishment has just become an ideological and legal narcotic we use to ease our legitimate concerns about the direction of our culture. Capital punishment might take away some of the symptoms, but the underlying illness is an absolute contempt for human life. Certainly state-sponsored killing reinforces that.

God spared humanity's first murderer, Cain. At the end of the day, any culture's moral character is defined by the value it places on human life—*all* human life. Can it not be said that the needle that poisons those whom the state executes also poisons us as a society? Does justice require repaying cruelty with cruelty?

To be sure, the Catholic religion does not teach that the death penalty is intrinsically evil. Indeed, the Church's social teaching implicates both the dignity of the individual person and the common good. If as a society we can protect our citizens by a means short of execution, we protect the common good while affirming the dignity of human life. It is only in those cases when it is necessary to execute a person to protect society that the death penalty is justified. Just as

war sometimes operates as a legitimate form of self-defense, so does execution, but only when absolutely no other means of protecting society exists.

In that context, the specter of executions in Maryland simply does not withstand scrutiny. The *Catechism of the Catholic Church* says:

If non-lethal means are sufficient to defend and protect people's safety from the aggressor [such as a convicted murderer], authority [should] limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person.

Id. at 2267. Pope John Paul II writing in *The Gospel of Life*, said:

The nature and extent of the punishment [for a capital crime] must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity; in other words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements to the organization of the penal system, such cases are very rare, if not practically non-existent.

Id. John Paul II stated that punishment for crime should not only seek to redress wrong and protect society, but it should also encourage the possibility of repentance, restitution and rehabilitation on the part of the criminal. As Cardinal Keeler told me so many years ago, execution removes that hope.

Clearly our correctional system suffers from serious flaws. The governor had to shut down the infamous Jessup "Cut" a short while ago. On the other hand, in this day and age, with the technology available to us, certainly we have the means to isolate the most dangerous in our society. Maybe, at that point, they can start on the road to repentance. Certainly it is easy for those of us involved in the criminal justice system—I have tried cases as a lawyer for going on 28 years—to dismiss the notion of repentance or rehabilitation because all of us have encountered people who seem to be the embodiment of evil. Yet the

proposition that some people are beyond rehabilitation and repentance simply does not withstand scrutiny. No one on the panel, in the hearing room, in the City of Annapolis, in the State of Maryland, in the United States or in the world can say he or she is perfect, that he or she has done nothing wrong. All of us have; some of us have repented. One would hope, please God, that all of us will repent, that we will learn from our mistakes, that we will be rehabilitated. Some of us have done worse things than others. Is it possible to draw some sort of an imaginary line and correctly state that people on one side of the line are incapable of repentance and rehabilitation while people on the other side of the line are? What could be more absurd?

My religion teaches that the path to true peace is through forgiveness. John Paul II traveled to an Italian prison to forgive the man who gut shot him while attempting to murder him. All of us should follow, or try to follow, his example. The death penalty keeps us from doing that. In the final analysis, state-sponsored killings neither achieve justice nor advance the causes of society. To the contrary, they demean us. The penalty reinforces violence and denigrates the dignity of human life. Our society should abolish it.¹

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¹ In drafting this testimony, I relied on my own experiences and my own thoughts and analyses. A number of other writings, however, helped me focus those thoughts. In that respect, I read various literature from the United States Conference of Catholic Bishops. I paid particular attention to an article entitled *Justice, Mercy and Capital Punishment* by the Most Reverend Charles J. Chapet, the Archbishop of Denver. I also relied upon the *Catechism of the Catholic Church* and John Paul II's *The Gospel of Life*. I also reviewed *The Gospel of Life and the Sentence of Death: Catholic Teaching on Capital Punishment* by Reverend Augustin Judd, O.P.